

UPDATED  
FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists. This regulation is being amended as an emergency regulation necessary for the immediate preservation of the general welfare, within the meaning of Government Code Section 11346.1.

Description of Specific Facts Which Constitute the Emergency:

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. Section 3700 implements a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease at the earliest possible time. On April 9, 2004, the Administrator of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) issued the first emergency order restricting the interstate movement of nursery stock from California nurseries located outside the area regulated under Section 3700. On April 22, 2004, USDA, APHIS issued a new order that replaced that issued on April 9, 2004. On April 23, 2004, USDA, APHIS issued a clarification of its April 22, 2004 order. Through this last federal emergency order and its subsequent clarification, the USDA, APHIS identified additional plant species as regulated associated articles and as such, these associated articles are prohibited interstate movement from all California nurseries unless properly certified under the provision of the federal emergency order.

Since April 2004, the USDA, APHIS has issued a series of federal emergency orders that amended the articles regulated including on: 1) August 5, 2004, 2) December 21, 2004, 3) August 3, 2005, 4) September 14, 2005 and November 15, 2005. As a result, it was necessary to make emergency amendments to the State's regulation governing the intrastate movement of hosts and associated articles (nursery stock) with these federal orders. Without a parallel State regulation that is substantially the same as the federal domestic quarantine and related federal orders, the USDA cannot regulate less than the entire State.

Parallel changes were made to Section 3700(c) by the Department to those contained in the

August 3, 2005 federal order and this emergency amendment became effective August 12, 2005. The notice was filed with Office of Administrative Law (OAL) on November 8, 2005 and was published in the California Register on November 18, 2005. The public comment period will end on January 2, 2006.

On August 3, 2005, the USDA, APHIS' federal order restricted the interstate movement of nursery stock from California, Oregon and Washington. Through this federal order, *Castanea sativa* (sweet chestnut), *Fraxinus excelsior* (European ash), *Griselinia littoralis* (Griselinia), *Parrotia persica* (Persian Parrotia or iron tree), *Quercus falcata* (Southern red oak), *Quercus ilex* (Holm oak), *Syringa vulgaris* (lilac), *Taxus baccata* (European yew) were designated as host plants and *Acer pseudoplatanus* (planetree maple), *Adiantum jordanii* (California maidenhair fern), *Calycanthus occidentalis* (spicebush), *Hamamelis mollis* (Chinese witch-hazel), *Magnolia stellata* (star magnolia), *Magnolia x loebneri* (Loebner magnolia), *Magnolia x soulangeana* (saucer magnolia) and *Taxus media* (yew) were designated as associated host plants.

Since August 12, 2005, the Department has prepared 12 emergency actions pertaining to plant pests which were subsequently approved by the OAL. This includes another two emergency amendments to Section 3700(c). As a result of the extraordinary number of emergencies, the Department did not get the Notice for this emergency action prepared and distributed in time to complete the Certificate of Compliance by December 12, 2005. Therefore, the Department requests that this emergency regulation amendment be continued by emergency readoption to provide the opportunity for the Department to complete its obligations under the California Administrative Procedures Act and retain its current regulatory authority to combat the spread of the "Sudden Oak Death" fungal pathogen, which is also subject to federal regulation.

The Department is proposing an emergency readoption of Section 3700(c) to continue to provide the necessary regulatory framework for a State program to continue to arrest the intrastate and interstate spread of this disease and be in compliance with the August 3, 2005 federal order.

The Department proposes to readopt this regulation because it is necessary to continue to have authority for an established statewide program in order to arrest the artificial spread of the disease to additional areas and harmonize the State's regulation governing the intrastate

movement of nursery stock with the latest federal order that governs the interstate movement of California nursery stock. The emergency readoption of this regulation is necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands. Additionally, it is necessary to immediately amend this regulation to avoid more stringent federal restrictions being placed against the State to prevent the interstate movement of articles and commodities that may carry *Phytophthora ramorum*. Without the immediate implementation of this proposed regulatory action, the USDA, APHIS may consider the entire state as infested with *Phytophthora ramorum*, rather than just the current 14 regulated counties. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California commodities by our international trade partners.

Additionally, the Department proposes to incorporate by reference into this emergency readoption all documents and supporting information originally submitted to the OAL as part of OAL File #05-0808-01 E and approved on August 12, 2005.

These facts and circumstances clearly indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department is therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The proposed emergency readoption of Section 3700(c) will establish eight new hosts and eight new associated hosts that would be covered by restrictions to prevent artificial spread of the pest to non-infested areas and correct some typographical errors. To protect California's agricultural industry, it is necessary to immediately regulate movement of hosts and potential carriers that can transfer the pest within and from the infested area. Therefore, it is necessary to readopt Section 3700(c) on an emergency basis.

#### Authority and Reference Citations

Authority: Sections 407, 5321 and 5322, Food and Agricultural Code.

Reference: Sections 24.5, 5321, and 5322, Food and Agricultural Code; Sections 11425.50 and 11440.10, Government Code; Section 1084 *et seq.*, Code of Civil Procedure.

#### Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code, Section 5322).

#### Section 3700. Oak Mortality Disease Control.

The proposed emergency readoption of Section 3700(c) will establish *Castanea sativa* (sweet chestnut), *Fraxinus excelsior* (European ash), *Griselinia littoralis* (Griselinia), *Parrotia persica* (Persian Parrotia or iron tree), *Quercus falcata* (Southern red oak), *Quercus ilex* (Holm oak), *Syringa vulgaris* (lilac), *Taxus baccata* (European yew) were designated as host plants and *Acer pseudoplatanus* (planetree maple), *Adiantum jordanii* (California maidenhair fern), *Calycanthus occidentalis* (spicebush), *Hamamelis mollis* (Chinese witch-hazel), *Magnolia stellata* (star magnolia), *Magnolia x loebneri* (Loebner magnolia), *Magnolia x soulangeana* (saucer magnolia) and *Taxus media* (yew) were designated as associated host plants.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3700 does not impose a mandate on local agencies or school districts, except that the agricultural commissioner of a county under regulation has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the 14 affected agricultural commissioners requested that they be added to the regulation.

#### Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.